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No. 74-1270

In the Supreme Court of the United States

OCTOBER TERM, 1974

RUSSELL TRAIN, ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, ET AL., PETITIONERS

v.

COLORADO PUBLIC INTEREST RESEARCH GROUP, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY MEMORANDUM FOR PETITIONERS

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Respondents assert that the "weight of the legislative history" of the Federal Water Pollution Control Act (FWPCA) "fully supports the holding of the court of appeals" (Br. in Opp. p. 5). In support of this contention, respondents rely on statements by Senator Muskie during the floor debate, indicating that EPA was to have comprehensive authority to regulate the discharge of pollutants into the water even when the source of the water pollution was a facility licensed by the Atomic Energy Commission (*id.* at pp. 8-12). But neither the Atomic Energy Commission nor its successors, the Nuclear Regulatory Commission and the Energy Research and Development Administration, have ever disputed this. Cf. *Calvert Cliffs' Coord. Com.* v. *Atomic Energy Commission*, 449 F.2d 1109 (C.A. D.C.). Applicants for nuclear facility

licenses have been consistently required to provide evidence that they have complied with applicable EPA and state water pollution control standards (see Pet. App. 8a).

Indeed, the issue in this case is important precisely *because* EPA has primary federal authority to determine water pollution standards and to assure compliance with such standards. For that reason, if the radioactive materials comprehensively regulated under the Atomic Energy Act are within the definition of pollutants in the FWPCA, the EPA also has the authority[1] to regulate their discharge from plants licensed by the Commission, as it clearly has the authority to limit the chemical and thermal pollution so discharged.

Although the legislative history upon which respondents rely indicates that FWPCA-regulated pollutants discharged by nuclear facilities must conform to EPA standards, it does not indicate that source, by-product and special nuclear material are such pollutants.[2] That is the issue to which the legislative history upon which we rely speaks directly (Pet. 17-18), and that is the issue our petition presents.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

MAY 1975.

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[1]And the duty, according to the court below (Pet. App. 12a, 16a).

[2]The legislative history that respondents deem so conclusive was neither cited nor relied upon by the court below.